

103/84

AGREEMENT

AGREEMENT made this \_\_\_\_ day of \_\_\_\_\_, 1984, by and between MELVIN J. BEERNTSEN, an individual sole proprietor of Green Bay, Wisconsin, d/b/a "Beerntsen's Candies" in Green Bay, Wisconsin, BEERNTSEN CONFECTIONARY, INC., a Wisconsin corporation with its principal place of business at Manitowoc, Wisconsin, THOMAS R. BEERNTSEN, an individual of Manitowoc, Wisconsin, and RICHARD M. BEERNTSEN, an individual of Manitowoc, Wisconsin.

In consideration of the matters hereafter set forth and of the promises hereafter contained, it is agreed as follows:

1. Definitions.

- (a) "Mel" as used herein shall refer to the said Melvin J. Beerntsen.
- (b) "Tom" as used herein shall refer collectively to Thomas R. Beerntsen, Richard M. Beerntsen and Beerntsen Confectionary, Inc.
- (c) "Confectionary" means the business of selling confectionary and related products.

2. Recitals and Purpose. This agreement is to compromise a controversy that has arisen with respect to the use in Wisconsin of the name "Beerntsen" in the confectionary business. Mel operates a confectionary business under the name "Beerntsen's Candies" with its principal place of business in Green Bay. Tom operates a confectionary business under the Beerntsen name with its principal place of business in Manitowoc. In 1981, Mel filed with the Secretary of State in Wisconsin a trademark registration under which Mel claims the right to use of the Beerntsen name in the confectionary business throughout Wisconsin except as Tom and his predecessors have established usage of the name at its Manitowoc location. Tom refutes Mel's claim on various grounds. In the interests of avoiding

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Exhibit E

conflict and of avoiding confusion on the part of the consumers as to their separate identities and for other considerations appearing herein, Mel and Tom have agreed to use of the Beerntsen name as appearing hereafter.

3. Territories. Tom agrees that he will not operate retail confectionary stores in Wisconsin under the Beerntsen name except as follows:

- (a) In the Counties of Manitowoc, Sheboygan, and Ozaukee (without limit as to the number of stores).
- (b) In the Village of Cedarburg.
- (c) In up to two other locations in Wisconsin to be selected by Tom more distant than 100 miles from the Brown County line.

Mel agrees that he will not operate confectionary stores under the Beerntsen name in the Counties of Manitowoc, Sheboygan and Ozaukee, or within 25 miles of such locations as Tom may hereafter select pursuant to Subsection (c) of this paragraph.

4. Image and Style. Use of the Beerntsen name by Tom or Mel in their permitted territories shall be distinctive as to image and style and in the case of Tom shall reference Manitowoc as the home store and in the case of Mel shall reference Green Bay as the home store. It is agreed that Exhibits A and B attached hereto (representing Mel's and Tom's current image and styles respectively) are sufficiently distinctive for the purposes of this agreement. If either party changes their current image and/or style, the new image and/or style will be at least as dissimilar as Exhibits A and B are to each other. Should either party object to a change of style as not being sufficiently distinctive, the issue will be submitted to binding arbitration to be adjudicated by a disinterested trademark attorney to be selected by the agreement of Mel and Tom provided that, if they are unable to agree upon such an arbitrator, the same shall be appointed by the Circuit Court for Brown County.

5. Indirect Violation. Any activity directly prohibited hereunder shall also be prohibited if done indirectly through ownership of a confectionary business by Tom or Mel as a stockholder, partner, sole proprietor or otherwise, and/or acting as an officer, employee, consultant, representative or agent of any confectionary business and will include any franchising, licensing or similar arrangement of any such business.

6. Sales for Resale. Neither Mel nor Tom shall sell confectionary products under the Beerntsen name which are intended for resale by any other confectionary retailer or by any distributor or middleman except that sales for resale under the Beerntsen name are permitted as follows: Tom may sell under the Beerntsen name to hotels, motels, convention centers, and resorts for in-house consumption or for resale on their premises where such facilities are located in the Counties of Manitowoc, Sheboygan and Ozaukee or are 100 miles or more distant from the Brown County line. Mel may sell under the Beerntsen name to such facilities for such purpose anywhere without restriction except in the Counties of Manitowoc, Sheboygan and Ozaukee.

7. Products Delivered to End User. Either party may sell under the Beerntsen name direct to any end user by mail, freight or other form of delivery anywhere without regard to restricted territories.

8. Wisconsin. The rights and obligations of the parties with respect to use of the Beerntsen name outside of Wisconsin, if any, shall be determined without reference to this agreement.

9. Binding. This agreement shall be binding upon and shall inure to the benefit of the parties' respective heirs, successors and assigns.

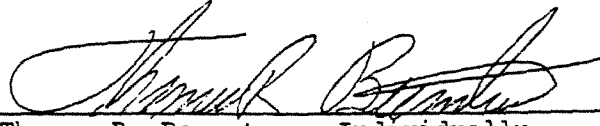
10. Term. This agreement shall be for a term of 25 years.

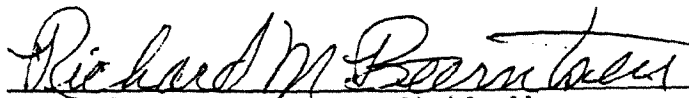
Executed as of the date first above written.

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Melvin J. Beerntsen, Individually, and d/b/a  
Beerntsen's Candies

BEERNTSEN CONFECTIONARY, INC.

By 

  
Thomas R. Beerntsen, Individually

  
Richard M. Beerntsen, Individually